

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 1/7/13

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SMILE TRAIN, INC.,

Plaintiff,

v.

BRIAN F. MULLANEY,

Defendant.
----- x

Case No. 12-cv-9102 (JGK)(JLC)

(ECF Case)

STIPULATION

WHEREAS, on December 13, 2012, Plaintiff Smile Train, Inc. ("Smile Train") filed a Complaint in the above-captioned action against defendant Brian F. Mullaney ("Mullaney", and together with Smile Train, the "Parties");

WHEREAS, on January 2, 2013, Smile Train served a First Amended Complaint;

WHEREAS, there has been no factual or legal determination by the Court;

WHEREAS, the Parties, without any admission of any allegation, wrongdoing or violation of law, voluntarily have entered into this stipulation;

WHEREAS, the undersigned attorneys of each Party certify that they are fully authorized by the Party they represent to agree to the terms and conditions of this stipulation and do hereby agree to the terms herein;

NOW, THEREFORE, IT IS HEREBY STIPULATED, by and between the Parties by their attorneys as follows:

1. The time for Mullaney to respond to the First Amended Complaint is extended as follows: (a) if Mullaney responds to the First Amended Complaint by serving an Answer, he shall do so on or before sixty (60) days after the entry of this Stipulation; or (b) if Mullaney

chooses to move in response to the First Amended Complaint, such date shall be set by the Court after Mullaney submits a letter to arrange a pre-motion conference pursuant to §2.A of the Individual Practices of Hon. John G. Koeltl, with such submission being made by Mullaney on or before sixty (60) days after the entry of this Stipulation;

2. For a period of sixty (60) days after the entry of this Stipulation, Mullaney shall not reproduce, copy, print, distribute or otherwise circulate the book entitled "One Smile At A Time" nor permit, direct, assist or abet anyone acting on his behalf or under his control in engaging in or performing the same;

3. For a period of sixty (60) days after the entry of this Stipulation, Mullaney shall not use or access Smile Train's donor list in any manner, nor permit, direct, assist or abet anyone acting on his behalf or under his control in engaging in or performing the same;

4. In the event of a disagreement between the Parties concerning the interpretation or performance of any aspect of this Stipulation, the dissatisfied Party shall provide the attorney for the other Party with prompt written notice of the dispute and a request for immediate negotiations. If the Parties are unable to resolve the dispute within three (3) business days after receipt of the notice, then any Party may petition the Court to resolve the dispute;

5. In the event of a petition to the Court by Smile Train to resolve any dispute regarding this Stipulation, made in accordance with the terms of paragraph 4, above, Mullaney's time to respond to the First Amended Complaint will be as follows: (a) if Mullaney responds to the First Amended Complaint by serving an Answer, he shall do so on or before ten (10) business days after the filing of the petition to the Court but not before January 31, 2013; or (b) if Mullaney chooses to move in response to the First Amended Complaint, such date shall be set by


the Court after Mullaney submits a letter to arrange a pre-motion conference pursuant to §2.A of the Individual Practices of Hon. John G. Koeltl, with such submission being made by Mullaney on or before ten business (10) days after the filing of the petition to the Court but not before January 31, 2013; and

6. Upon the expiration of sixty (60) days after the entry of this Stipulation, the parties may agree to extend the terms of this Stipulation, or seek appropriate intervention from the Court if necessary; and

7. Subject to the foregoing, no provisions of this Stipulation shall be construed or deemed a waiver of any claims or defenses that may be raised by the Parties in this action, all of which are hereby reserved.


Dated: January 7, 2013

KAYE SCHOLER LLP

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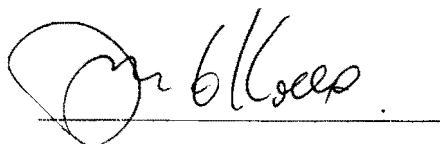
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Attorneys for Defendant Brian F. Mullaney

SO ORDERED:



Hon. John G. Koeltl, U.S.D.J.

1/8/13.

Date